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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,458	08/04/2006	Susanne Matheus	MERCK-3217	5757
23599 7590 06/11/2009 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201				
EXAMINER KAUFMAN, CLAIRE M				
ART UNIT		PAPER NUMBER		
1646				
NOTIFICATION DATE		DELIVERY MODE		
06/11/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

**Attachment to Advisory Action**

Continuation of 3: NOTE: The proposed amendment to claims 17 and 21 would not overcome the rejection under 35 USC 112, second paragraph, and would require further consideration as to the proposed newly listed ingredients' "activity". The proposed amendment would if entered overcome the lack of antecedent basis issues set forth in the previous Office action.

Continuation of 11: The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The arguments are substantially the same as in the previous response, particularly that WO 02/096457 is limited to IgE antibodies. As discussed in length on page 5 of the previous Office action (3/19/09), while IgE antibodies are presented as the preferred embodiment, the prior art method is by no means limited to IgE antibodies and there is a reasonable expectation of success of the concentrating method of WO 02/096457 for the reasons previously set forth absent evidence to the contrary. The citation of US 6,252,055 to support Applicants' arguments is not persuasive because it is prior art and the difficulty in concentrating monoclonal antibodies mentioned in it relate not to the current skill in the art at the time the instant application was filed, but to the state of the art prior to 1998--the effective filing date of that patent, which is at least 5 years before even the effective filing date of the instant application. It is noted that US 6,252,055 is available as prior art and as stated in the paragraph bridging pages 7-8 of the Office action mailed 9/9/08:

US 6,252,055 (reference A1 cited in the IDS filed 7/11/08) is cumulative with WO 02/096457 as relied upon above as teaching methods of making highly concentrated formulations of antibodies by ultrafiltration for concentrations of 100 mg/ml up to 300mg/ml (col. 2, lines 30-37 and col. 4, lines 18-23), and also monoclonal antibodies including humanized antibodies (col. 3, lines 28-31). Likewise, concentration by means of ultrafiltration is also taught (col. 5, lines 8-19).

Therefore, US 6,252,055 does not teach away from the claimed invention nor support a finding that the instant invention proceeds "contrary to accepted wisdom in the art" and is, therefore, non-obvious. (*In re Hodges*, 228USPQ 685 (Fed. Cir. 1986), cited by Applicants) Instead, US 6,252,055 supports the assertions and findings of WO 02/96457 (Arvinte et al.) and, therefore, the finding of obviousness for the instantly claimed invention. It is noted that the patent states

(col. 3, lines 18-20) that, "The present invention is applicable to a preparation of immunoglobulin of all classes, i.e., IgM, IgG, IgA, IgE and IgD...."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Claire Kaufman, whose telephone number is (571) 272-0873. Dr. Kaufman can generally be reached Monday, Tuesday, Thursday and Friday from 9:30AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol, can be reached at (571) 272-0835.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Official papers filed by fax should be directed to (571) 273-8300. NOTE: If applicant *does* submit a paper by fax, the original signed copy should be retained by the applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Claire Kaufman, Ph.D.  
/Claire Kaufman/  
Patent Examiner, Art Unit 1646  
June 8, 2009

Lorraine Spector, Ph.D.  
/Lorraine Spector/  
Primary Examiner, Art Unit 1647

Application/Control Number: 10/588,458  
Art Unit: 1646

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